



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1995

Mr. Steve Aragón
Office of General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR95-225

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28983.

The Texas Department of Human Services (the "department") received an open records request from a current employee for certain records pertaining to him. You state that this employee has requested, *inter alia*, the following:¹

An investigation into Compliance Review Team Procedures employed during March 1994 review of the Harwin Office of [the department] and a copy of the investigation.

A copy of an investigation of [the employee] conducted by the [department's] Office of the Inspector General.

You inform this office that neither of these two records exist. Accordingly, the department need not comply with these requests. See Open Records Decision No. 342 (1982).

The requestor also has requested a copy of

¹We base this ruling on your representation of the employee's open records request. This office did not receive a copy of the employee's request.

any and all documentation collected during the compliance review of the Harwin office in March 1994, including copies of statements, affidavits, interview notes, summaries, and any other pertinent information related to the review in which [the employee's] name is mentioned.

You contend that the department may withhold these records, representative samples of which you have submitted to this office, pursuant to sections 552.101 and 552.103 of the Government Code.

You state that the department received the open records request on August 29, 1994. You requested a decision from this office on September 9, 1994. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* 797 S.W.2d at 381. You have not shown compelling reasons why the information at issue should be withheld under section 552.103. Consequently, this office deems this exception as being waived.

However, because section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," we will consider your section 552.101 claim because release of confidential information is considered a misdemeanor. See Gov't Code § 552.352. You contend that portions of the requested information concern allegations of sexual harassment and therefore come under the protection of common-law privacy. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).


In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.*

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Id.* at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.* at 525.

In this instance, however, it is not clear to this office whether or to what extent the department has released details of the alleged sexual harassment to the public. Consequently, for purposes of this ruling, we will assume that the department has not previously released records that detail all of the allegations. After reviewing the records at issue, we have determined that although the identities of the witnesses who supplied information to the department must be withheld under common-law privacy in accordance with *Ellen*, the department must release all remaining information pertaining to the allegations because of the clear public interest in this information. *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). We have marked the representative samples of documents to indicate the types of information that the department must withhold from these and the remaining requested records; all other portions of the requested records must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" and last name "DeHay" clearly distinguishable.

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref: ID# 28983

Enclosures: Marked documents

cc: Mr. Jose García
4242 Upon Ridge
Houston Texas 77072
(w/o enclosures)